IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 09-06-2007

CORAM

THE HONOURABLE MR.JUSTICE S.J.MUKHOPADHAYA
AND
THE HONOURABLE MR.JUSTICE S.TAMILVANAN

WRIT APPEAL Nos.1944 and 1945 of 2001

Sri Ravichandran Transports
No.4, Pulla Avenue,
Shenoy Nagar, Chennai - 600 030
Rep. by Partner Thiru Manoharan ... Appellant in both the Writ Appeals/Petitioner in 11247/93 AND 5958/00

-vs-

Chennai Metropolitan Development Authority
No.8, Gandhi Irwin Road,
Chennai - 8
Rep. by the Chief Executive Officer. ... Respondent in both the Writ Appeals/Respondents 11247/93 and 5958/03

Writ appeals filed under Clause 15 of the Letters Patent against the common orders dated 01.08.2001 made in W.P.No.11247 of 1993 and W.P.No. 5958 of 2000.

WP NO. 11247/93:-

Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified Mandamus to call for the entire records relating to the impugned proceedings of the Respondent in Letter NO. P4/89/91, dated 13/1/93 and that of another letter NO. M1/4633/93 dated 23/4/93 and quash the said impugned letters of the respondent dated 13/1/93 and 23/4/93 respectively and consequently restrain the respondent from in any way canceling the allotment made in favour of the petitioner with reference to Plot NO. A-11 in Truck Terminal Complex at Madhavaram respectively

WP NO. 5958 of 2000

Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified Mandamus to calling for the

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records of the respondent herein relating to the letter dated 4/1/2000 and the subsequent letter dated 10/3/2000 made in No,.LADS/11526/93 quash the above two letters and direct the respondent to allow the alternative Plot NO. A15 at MBTT Complex Madhavaram at the original cost price respectively

For appellant : Mr.M.Sriram in both the writ appeals

For respondent : Mr.J.Ravindran for respondent in both the writ appeals

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by S.TAMILVANAN,J)

Both the writ appeals arising out of a common order, dated 01.08.2001, passed by the learned single Judge and the parties are the same in both the writ petitions.

2. It is seen that W.P.No.11247 of 1993 was filed by the appellant herein on 16.06.1993, seeking an order for quashing the Lr.No.P4/89/91, dated 13.01.1993 and another Lr.No.M1/4633/93, dated 23.04.1993 and there was also a consequential prayer for injunction restraining the respondent herein from cancelling the allotment made in favour of the appellant for Plot No.A-11 in Truck Terminal Complex at Madhavaram, Chennai.

3. It is not in dispute that the appellant had been the successful bidder in respect of Plot No.A-11 in a tender called for by the respondent. The appellant being the successful bidder, pursuant to the terms and conditions, remitted a sum of Rs.40,100/- along with his application on 22.07.1988 and he was also informed by letter, dated 03.05.1990 that "A" type plot under hire purchase scheme, having an extent of 880 Sq.ft in Plot No.A-11 was allotted to him. As per the terms and conditions, the appellant had to pay Rs.59,400/- as first instalment on or before 30.06.1990, the second instalment of Rs.99,000/- had to be paid on or before 30.09.1990, the third instalment had to be paid on or before 31.12.1990 and similarly, the last instalment of Rs.99,000/- to be paid on or before 31.03.1991.

4. According to the appellant, he had made the following payments : Rs.60,000/- on 31.01.1992, Rs.99,000/- on 29.05.1992, Rs.50,000/- on 13.08.1992 and Rs.75,000/- on 30.03.1993. Therefore, as found by the learned single Judge, the appellant was a defaulter. By letter, dated 28.11.1990, the appellant was informed to pay the instalments along with interest at 18% p.a, but the same was not complied with. Hence, after the reminder, the

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appellant was informed that his allotment was cancelled. According to the learned counsel for the appellant, he had paid a total sum of Rs.3,49,000/-, out of Rs.3,96,000/- (approximately). After the cancellation, the Plot No.A-11 was allotted to one M/s.Srinivas Colours. The appellant has not chosen to implead the said allottee M/s.Srinivas Colours as a respondent in the writ petition.

5. Learned single Judge has held that there was no error in the order, cancelling the allotment of Plot No.A-11, since the appellant had been a defaulter and in the subsequent re-allotment made in favour of the aforesaid third party. It is not in dispute that the appellant had paid Rs.1,00,000/- in addition to the earlier payment made by him, as directed by this Court, while interim exparte order was granted.

6. As contended by the learned counsel appearing for the respondent, the C.M.D.A had already cancelled the allotment, even before the writ petition was filed and proceeded to allot the said plot, prior to the filing of the writ petition. When the writ petition was pending, it seems that there was negotiation between the appellant and the respondent and the respondent C.M.D.A agreed to allot the appellant an alternative plot. According to the learned counsel for the appellant, he was asked to withdraw W.P.No.11247 of 1993, in order to consider his request for allotment of alternative plot, accordingly, he withdrew the writ petition. Subsequently, the respondent herein informed the appellant for the allotment of alternative Plot No.A-15, but he was directed to pay Rs.21,32,353/- to C.M.D.A, as per the prevailing market rate.

7. The relief sought for in the writ petition in W.P.No.11247 of 1993 is to call for the proceedings of the respondent in Lr.No.P4/89/91, dated 13.01.1993 and another Lr.No.M1/4633/93, dated 23.04.1993 and quash the same and consequently, restrain the respondent from canceling the allotment made in favour of the appellant, with reference to Plot No.A-11. As the appellant had been a defaulter, only after notice and remainder, the allotment of Plot No.A-11 was cancelled by the respondent and therefore, the letters referred above are no way illegal, to be quashed. Similarly, the consequential relief is also not legally sustainable. Therefore, we are of the considered view that W.A.No.1944 of 2001 is liable to be dismissed.

8. According to the learned counsel appearing for the appellant, alternative Plot No.A-15 was allotted, in view of the negotiation between the parties and the withdrawal of the earlier writ petition filed by the appellant and therefore, the respondent cannot claim exorbitant amount, as per prevailing market rate. The cost of the alternative Plot No.A-15, if calculated on the basis of the original rate on which Plot No.A-11 was allotted and as per

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agreement if upto date interest at the rate of 18% is charged, the total cost will work out to Rs.14,93,006/-, but the authorities arbitrarily fixed the price of alternative Plot No.A-15 at Rs.21,32,353/-. It being on the higher side, the second writ petition was preferred.

9. It is not in dispute that the appellant failed to deposit the requisite amount within time with reference to Plot No.A-11, which was allotted in his favour. Even total amount was not deposited by him. He being a defaulter, cannot challenge the order of cancellation of allotment of Plot No.A-11. Further, the order of cancellation having made prior to filing of the first writ petition, W.P.No.11247/93 and the said plot having already been allotted in favour of a third party, who is not a party to the writ petition, no relief could be granted in W.P.No.11247/93.
So far as the second writ petition, W.P.No.5958/2000 is concerned, learned single Judge, rightly held that the alternative plot was subsequently allotted to the appellant, without drawing any lots or without holding any auction and that itself was a concession given to him. In this background, if on concession the authorities have allotted Plot No.A-15 for a sum of Rs.21,32,353/-, it requires no interference.

The appellant, if so choose, may accept the offer of allotment of alternative Plot No.A-15. Taking into consideration that the appellant is pursuing the matter since 1993, we allow him to deposit the sum of Rs.21,32,353/-, as demanded by the respondents, for alternative Plot No.A-15 after adjustment of the amount, which has already been deposited. If rest of the amount out of Rs.21,32,353/- after adjustment of the amount already deposited towards cost of earlier Plot No.A-11 is deposited by the appellant within three months in three equal instalments, the respondents will complete the formalities and execute appropriate deed immediately, failing which offer of allotment of alternative Plot No.A-15 shall stand automatically dismissed.

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10. In the result, W.A.No.1944/01 is dismissed and W.A.No.1945/01 stand disposed of with the aforesaid observations. There shall be no order as to costs.

tsvn

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Executive Officer
Chennai Metropolitan Development Authority
No.8, Gandhi Irwin Road,
Chennai - 8.

+ one cc to Mr. M. Sriram, Advocate sr no. 33207

nsm(co)
nm(13.06.07)

W.A.Nos.1944 and 1945 of 2001

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